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6 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 ERIC RAMON BUCHANAN,

11 Defendant.  
12

NO. CR-05-0209-RHW

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
NEW TRIAL**

13 Before the Court is Defendant's Motion for Judgment of Acquittal, Arrest of  
14 Judgment or New Trial (Ct. Rec. 87). A hearing was held on June 23, 2006.  
15 Defendant was present and represented by Tracy Collins; Assistant United States  
16 Attorney Aine Ahmed appeared on behalf of the Government. At the hearing, the  
17 Court determined it was inappropriate for it to consider the portion of Defendant's  
18 motion that requests a new trial due to the Court's independent knowledge of the  
19 events surrounding his motion (see Ct. Rec. 86). Accordingly, Defendant's motion  
20 for a new trial was referred to the Honorable Justin L. Quackenbush for decision.  
21 Judge Quackenbush issued his findings of fact regarding Defendant's Motion for a  
22 New Trial on July 5, 2006 (Ct. Rec. 104).

23 The Court accepts Judge Quackenbush's findings regarding Juror Number  
24 2's viewing of the deleted word from the transcripts during trial. Judge  
25 Quackenbush's findings reflect that Juror Number 2's viewing of the deleted word  
26 had no impact on his deliberations and that he and the other jurors followed the  
27 Court's instructions concerning the limited use to be made of the recording  
28 transcript.

1 Defendant asks for a new trial due to juror misconduct in this case. The  
2 Ninth Circuit distinguishes between two kinds of juror misconduct cases. Juror  
3 misconduct may be based on the introduction of extraneous evidence to the jury, or  
4 it may be based on *ex parte* contacts with a juror “that do not include the imparting  
5 of any information that might bear on the case.” *United States v. Rosenthal*, 445  
6 F.3d 1239, 1244 (9th Cir. 2006) (citation omitted). “Extraneous-evidence cases  
7 involve not only the introduction of ‘evidence’ per se but the ‘submission of  
8 “extraneous information” (e.g., a file or dictionary) to the jury.’” *Id.* at 1244-45  
9 (citation omitted). In extraneous-information cases, courts should grant a new trial  
10 if “there is a reasonable possibility that the material could have affected the  
11 verdict.” *Id.* at 1245 (citation omitted). The presence of extrinsic material does  
12 not always require a new trial, but the Court should conduct a careful review of the  
13 “circumstances and nature of the material to ensure that jurors deliberate without  
14 undue outside pressure or influence.” *Id.* The burden to demonstrate an absence of  
15 prejudice is generally placed on the party opposing the motion. *Id.*

16 The juror misconduct considered in *Rosenthal* involved a juror speaking  
17 with an attorney-friend about whether she must follow the court’s instructions.  
18 The attorney advised the juror that she was required to do so or “risk ‘get[ting] into  
19 trouble.’” *Id.* at 1242. Here, Juror Number 2 did not receive information or  
20 instructions on the law from an outside source that could have undue influence  
21 upon him, as was the case in *Rosenthal*. Instead, Juror Number 2 saw a word that  
22 was not meant to be viewed, and he has clearly and unequivocally stated that he  
23 did not consider the word. Accordingly, “it can be concluded beyond a reasonable  
24 doubt that extrinsic evidence did not contribute to the verdict” in this case. *United*  
25 *States v. Bagley*, 641 F.2d 1235, 1241 (9th Cir. 1981).

26 Considering the instructions given to the jury, the arguments and  
27 submissions of counsel, and Judge Quackenbush’s findings of fact, the Court  
28 denies Defendant’s motion for a new trial.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Judgment of Acquittal, Arrest of Judgment or  
3 New Trial (Ct. Rec. 87) is **DENIED**.

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
5 Order and forward copies to counsel and to the Honorable Justin L. Quackenbush.

6 **DATED** this 7<sup>th</sup> day of July, 2006.

7  
8 *s/ Robert H. Whaley*

9 ROBERT H. WHALEY  
10 Chief United States District Judge

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